

**MINUTES OF THE MEETING**  
**HEALTH SERVICES COUNCIL**

**DATE: 5 June 2007**

**TIME: 2:30 PM**

**LOCATION: Health Policy Forum**

**ATTENDANCE:**

**Council: Present: Victoria M. Almeida, Esq. (Vice Chair), Edward F. Almon, Raymond C. Coia, Esq., John W. Flynn, Wallace Gernt, Maria R. Gil, Catherine E. Graziano, R.N., PhD., Robert S.L. Kinder, M.D., Amy Lapierre, Thomas M. Madden, Esq., Robert J. Quigley, DC, (Chair), Larry Ross**

**Not Present: Joseph V. Centofanti, M.D, Rosemary Booth Gallogly, Robert Ricci, Robert Whiteside**

**Excused Absence: Robert Hamel, Larry Ross, Denise Panichas, Reverend David F. Shire (Secretary)**

**Staff: Valentina Adamova, Michael K. Dexter, Joseph G. Miller Esq., Ray Rusin, Donald C. Williams**

**Public: (Attached)**

## **1. Call to Order, Approval of Minutes, Conflict of Interest Forms and Time Extension for the Minutes Availability**

**The meeting was called to order at 2:35 PM. The Chairman noted that conflict of interest forms are available to any member who may have a conflict. Minutes of the 1 May 2007 meeting were approved as submitted. The Chairman requested a motion for the extension of time for the availability of minutes pursuant to the Open Meetings Act. A motion was made, seconded and passed by a vote of eleven in favor and none opposed (11-0) that the availability of the minutes for this meeting be extended beyond the time frame provided for under the Open Meetings Act. Those members voting in favor were: Almeida, Almon, Flynn, Gernt, Gil, Graziano, Kinder, Lapierre, Madden, Quigley, Ross.**

## **2. General Order of Business**

**Staff noted errata sheets for the reports on Tockwotton Home regarding corrections to the operating costs amount, Home & Hospice Care of Rhode Island regarding corrections to the capital costs amount and change order of Roger Williams Radiation Therapy, LLC regarding conditions of approval.**

**Staff noted letter from Radiation Oncology Associate, Inc., 21st Century Oncology and Radiation Therapy Services, Inc. (RTSI) with**

regards to the change order request of Radiation Oncology Associates, Inc. Staff noted a letter from Tockwotton regarding change to the operating costs.

Mr. Miller, legal counsel to the Department, noted that RTSI filed an appeal to the declaratory ruling issues by the Department declaring that the change order for the request of Radiation Oncology Associates was the appropriate review and did not require a full Certificate of Need application. He noted that the Adjudicator of Administration declined jurisdiction on the issue of the declaratory ruling. He noted that the declaratory ruling was then appealed to the Superior Court as well as a motion to stay the proceedings by RTSI. He stated that this morning the judge declined to issue a stay and declined to tell the Department not to go forward with the review of the change order request.

The Chairman noted that the Health Services Council has a quorum. He noted that the presentation by Raymond Rusin would be rescheduled for the next Health Services Council meeting.

The next item on the agenda was the Report of the Committee of the Health Services Council on the application of Tockwotton Home for a Certificate of Need to construct a replacement facility and increase its licensed bed capacity by ten beds. Staff summarized the application and the deliberations of the committee on this matter.

**A motion was made, seconded and passed by a vote of twelve in favor and none opposed (12-0) to recommend that the applications be approved. Those members voting in favor were: Almeida, Almon, Coia, Flynn, Gernt, Gil, Graziano, Kinder, Lapierre, Madden, Quigley, Ross.**

**The next item on the agenda was the Report of the Committee of the Health Services Council on the application of Home & Hospice Care of Rhode Island for a Certificate of Need to establish a 24-bed inpatient hospice facility. Staff summarized the application and the deliberations of the committee on this matter.**

**A motion was made, seconded and passed by a vote of twelve in favor and none opposed (12-0) to recommend that the applications be approved. Those members voting in favor were: Almeida, Almon, Coia, Flynn, Gernt, Gil, Graziano, Kinder, Lapierre, Madden, Quigley, Ross.**

**The next item on the agenda was the Report of the Committee of the Health Services Council on Radiation Oncology Associates, Inc.'s change order request to prior Certificate of Need applications to operate three linear accelerators. Staff summarized the application and the deliberations of the committee on this matter.**

**Staff noted the objectors to this application as Radiation Therapy Services, Inc., New England Radiation Therapy Management, Inc., Southern New England Regional Cancer Center, LLC and Roger Williams Radiation Therapy, LLC. Staff noted that the Committee reviewed this request on 1 February 2007 and 10 May 2007 with the applicant, its legal counsel and legal counsel to the objector present at all meetings. At the 1 February 2007 meeting, there was discussion as to which process, Certificate of Need or change order, the request should be processed. Staff stated that Mr. Miller has previously described the outcomes of the administrative and Superior Court appeals. At the 10 May 2007 meeting, the Committee made a recommendation of approval for the change order request with conditions of approval.**

**Staff noted that since 10 May 2007, there has been submission of additional information by the applicant and the objector.**

**Ms. Warren, legal counsel to the applicant, discussed the 5 June 2007 letter of the applicant and reasons for the change order request.**

**Mr. Gernt stated that he voted against the project at the Committee meeting because of his concerns regarding the process as a change order. He stated that he is not opposed to the proposal itself.**

**Ms. Almeida stated that she disagrees with Mr. Gernt's position. She stated that it is the authority of the Department to determine the**

**review process. She noted the Superior Court ruling.**

**To question of Mr. Coia, Mr. Miller stated that the Superior Court declined to issue a stay and the appeal to the Department of Administration and in that instance that Department stated that they do not have the jurisdiction to hear that appeal.**

**Mr. Almon noted his concerns regarding the split decision of the Committee on this matter. He noted a study that among industrial countries, United States is poorest in health quality and first in cost in healthcare. He stated that he is opposed because there are no real broad based guidelines.**

**Mr. Ross noted that split votes have happened in the past. He stated that the proposal is a strategic move. He noted his concern regarding the review process.**

**To Sen. Graziano's question regarding any outstanding rulings, Mr. Miller stated that there is an appeal of the declaratory ruling made by the Department that the proposal was a change order. He stated that the Superior Court decision today to not grant a stay has nothing to do with that.**

**Mr. Zubiago, legal counsel to RTSI, stated that the proposal should be reviewed as a Certificate of Need and the change order request should be denied. He stated that this is a new provider.**

**Mr. Miller stated that the issue raised by Mr. Zubiago, has been decided, and the Health Services Council has been given the matter to consider as to the merits of the change order. He noted that the issue of whether this proposal is a change order or Certificate of Need shall be decided by the court. He stated that it is not within the Health Services Council's jurisdiction to determine the review and the Superior Court will make a decision on that. He stated that the Health Services Council needs to make a decision as to whether this change order application has merit or no merit.**

**A motion was made, seconded and passed by a vote of seven in favor, three opposed and two abstentions (7-3-2) to recommend that the applications be approved. Those members voting in favor were: Almeida, Flynn, Gil, Kinder, Lapierre, Madden, Quigley. Opposed were: Almon, Coia, Gernt. Abstentions were: Graziano, Ross.**

**The next item on the agenda was the Report of the Committee of the Health Services Council on change order request of Roger Williams Radiation Therapy, LLC for a Certificate of Need to acquire, own and operate a Varian Clinac iX linear accelerator to provide radiation therapy services in Providence. Staff summarized the application and the deliberations of the committee on this matter. Staff noted the errata sheet which included additional conditions of approval from the original Certificate of Need. Staff noted that the capital costs**

would increase by \$629,000 and that the applicant would maintain the same ratio of equity and debt.

A motion was made, seconded and passed by a vote of eleven in favor, none opposed and one abstention (11-0-1) to recommend that the applications be approved. Those members voting in favor were: Almeida, Coia, Flynn, Gernt, Gil, Graziano, Kinder, Lapierre, Madden, Quigley, Ross. Almon abstained.

Staff noted that Dr. Quigley, Dr. Kinder and Mr. Almon have been reappointed to the Health Services Council for three-year terms.

### **3. Adjournment**

There being no further business the meeting was adjourned at 3:45PM.

Respectfully submitted,

Valentina D. Adamova